IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 728 of 1996

in

SPECIAL CIVIL APPLICATION No 5436 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHCHANDRA V BHAGAT

Versus

GUJARAT AGRO INDUSTRIES CORPN.LTD.

Appearance:

1. LETTERS PATENT APPEAL No. 728 of 1996

MR RAMESH A DAVE for Appellant No.

MR YH VYAS for Appellant No.

MS PJ DAVAWALA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 22/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. By way of Special Civil Application No.5436/95, the appellant-petitioner has challenged his impugned order of dismissal dated 18.8.1993 (Annexure-B to the main petition) passed by the respondent-Corporation. It was dismissed by the learned Single Judge of this court on 16.4.1996. Hence, this appeal.

#. The appellant-petitioner had initially joined his services as Senior Mechanic in January, 1970. Since then he was working in the respondent-Corporation till the impugned order of dismissal came to be passed in 1993. During this period from 1970 to 1993 because of his good performance, within a period of less than 2 years i.e. in August, 1971, he was initially promoted to the post of Service Engineer and, thereafter, in 1976 he was further promoted as Manager (Jr.) Complex. He was further promoted to the post of Manager (Complex) in 1979 and in September, 1986 he was further promoted to the post of Divisional Manager (Agro Services). It is the case of the petitioner that during the period of 23 years from 1970 to 1993, his work was appreciated by one and all, which is stated in para 5 of this petition. During this period he was sent to various places like Bombay, Delhi and Hyderabad and in March, 1991 he was sent for training to Indian Institute of Management, Ahmedabad regarding Programme in Agricultural Input Marketing. His services were highly appreciated, as stated by him in his petition in paras 6.1 to 6.8. It includes different Managing Directors, including Mr.K.S.Varma, who had highly appreciated him in June, 1990. All these averments made in the petition by the petitioner remained uncontroverted as though served with notice, the respondent-Corporation had not preferred to file any reply to it.

#. It is stated by the petitioner in his petition that from 1970 till June, 1991 neither any inquiry was held nor even a memo was issued to him, but all of a sudden on 26.6.1991 the petitioner was placed under suspension by Mr.K.S.Varma, Managing Director of the respondent-Corporation on the ground that he committed serious misconduct for which regular departmental inquiry was required to be initiated against him and accordingly he was placed under suspension with effect from the date

of passing of the order i.e. 26.6.1001 from his post of Divisional Manager (Agro Services). Aggrieved by this order of suspension, the petitioner had approached this court by way of Special Civil Application No.4295/91 and the learned Single Judge of this court while admitting that petition stayed the order of suspension by granting mandatory ad interim relief in his favour. In pursuance of the said order passed by the learned Single Judge of this court, he was reinstated in service. After a period of almost one year of reinstatement, for the first time in July, 1991 charge sheet (Annexure-F to the main petition) was issued by Mr.K.S.Varma, Managing Director of the respondent-Corporation for the following three charges :-

(i) You had proposed a Note vide Ref.No.DM/AS/123 dated 22nd April, 1991 for procurement of Steel by M/s.Hitesh Steel Industries Pvt. Ltd. from various institutions through our Corporation. Managing Director disapproved of the proposal and suggested that the Corporation should not act as an agent of a private party, but should act ourselves and obtain the quantity from the Government directly. The file with the above remarks of Managing Director reached you through AGM(AS) who directed you to offer your remarks on 13.5.91. You reiterated your earlier view points which had been rejected by Managing Director. Thereafter, without obtaining approval to the proposed course of action, straight effected direct sale keeping top management including your Divisional Head totally ignorant about the sale clandestine. This is a grave misconduct as per the Rule-6 of GAIC Discipline & Conduct rules, 1988.

(ii) You have without approval of the Managing Director procured 654 M.Ts. of steel from the Government and sold it to M/s.Hitesh Steel Industry Pvt. Ltd.

(iii) You effected direct purchase of steel from the Government and sold it to M/s.Hitesh Steel Industry Pvt. Ltd. and arranged to make direct payment M/s.Hitesh Steel Industry Pvt. Ltd. without any limitation to the authorities or the approval of the Managing Director. No entry has been made in the books of accounts in the Corporation in respect of the aforesaid sale and purchase and you kept the Finance Division as well as Top Division (Management) in total dark.

A statement of imputations is enclosed herewith. Please note that the details as to the above charges are given in the statement of imputations which should be read as part of the charges".

Along with the charge sheet, Statement of Imputation was also annexed, which is as under :-

"It has come to the notice that you procured 750 M.ts. of steel from the Irrigation Department of the Government of Gujarat. Out of the aforesaid 750 M.ts. steel, 96 M.ts. Steel have been accounted for in the finance Division as payment received by the party. The rest of 657 M.ts. steel was purchased from the Irrigation Department and sold to M/s.Hitesh Steel Industry Pvt. Ltd. by you and you made arrangement to make direct payment from M/s.Hitesh Steel Industry Pvt. Ltd. to the Government. This was done by you without taking any approval or giving intimation to the authority concerned. No corresponding entry in the books of accounts of the Corporation has been made and the Finance Division as well as the Top Management is kept in complete dark about the aforesaid transaction of 654 M.ts. of steel made by you from the Government and the transaction of sale made to M/s.Hitesh Steel Industry Pvt. Ltd.

It appears that the balance of 654 M.ts. (750 M.ts. minus 96 M.ts.) has been purchased without any approval or knowledge of the management in complete violation of all the norms laid down in that behalf. The goods are not received by the Corporation in the premises nor the payment has been made by the Corporation and yet it appears that the goods have been purchased from the Government and the transaction have been effected without anybody's approval. This is a fraudulent transaction which affects the reputation of the Corporation. On 25th June, 1991, the State Finance Minister convened a meeting wherein GAIC was also called to explain the nature of the business involved from the steel procured from the Irrigation Department. You gave misleading information to the Finance Minister on various counts at the said meeting. The most blatant lie was regarding information of the existence of the stock of steel in GAIC Juhapura Complex.

The above referred imputation of misconduct may be read and treated as part of the charge sheet and you are called upon to show-cause in respect of the same as mentioned in the charge sheet."

From the above charge sheet and statement of imputations, it appears that nowhere the petitioner was told that he committed serious misconduct for which maximum penalty could be imposed on him.

#. On receiving the charge sheet he submitted his reply and denied all the allegations levelled against him. Thereafter, on 15.1.1992 Inquiry Officer was appointed for holding regular inquiry against him. It is stated at the Bar that during the inquiry only one witness was examined and, thereafter, inquiry was closed and the Inquiry Officer submitted his report dated 14.6.1993. It may be stated that during the pendency of the inquiry, while in service, the appellant-petitioner decided to resign from service and, accordingly he submitted his resignation letter dated 1.8.1992. However, the petitioner was never informed as to whether his resignation was accepted or not. Be that as it may. After receiving the report of the Inquiry Officer, second show cause notice dated 22.7.1993 was issued. But, it seems that the appellant-petitioner had not thought it fit to reply the same because of his resignation letter dated 1.8.1992. Thereafter, by impugned order dated 18.8.1993 (Annexure-B to the main petition), Capt.R.N.Dogra, Executive Director (A) of the respondent-Corporation terminated the services with immediate effect and ordered that the appellant-petitioner will not be entitled to any pay and allowances with effect from 1.8.1992 (the date of his resignation) as he had abandoned the service of the Corporation from that date.

#. At this stage, it may be stated that on receiving second show cause notice for proposed penalty, the appellant-petitioner had approached this court by way of another Special Civil Application No.7730/93, but during the pendency and final disposal of that petition, impugned termination order came to be passed. Therefore, learned Single Judge of this court disposed of that petition by making it clear that it would be open to the petitioner to challenge the impugned order of dismissal from service by filing fresh petition. That is how the appellant-petitioner filed fresh Special Civil

Application No.5436/95 before this court which was dismissed by the learned Single Judge on 16.4.1996. Hence, this appeal.

#. From the judgment and order dated 16.4.1996 passed by the learned Single Judge of this court dismissing the Special Civil Application No.5436/95 filed by the appellant-petitioner it is clear that there was no allegation whatsoever against the appellant-petitioner for having gone through the transactions for his personal financial gain. In fact, the learned Single Judge himself has observed in his order that "Though no direct allegations are made against the petitioner for having gone through these transactions for his personal financial gain, the fact remains that the petitioner acted in furtherance of the transaction though the proposal which was submitted by him was not approved by the Managing Director".

#. From the judgement of the learned Single Judge as well as the averments made in the petition, allegations stated in the charge sheet and statement of imputation, it clearly appears to us that though the proposal put by the petitioner for procurement of steel by M/s.Hitesh Steel Industry Pvt. Ltd. through the Corporation was disapproved by the Managing Director (Mr.K.S.Varma), he (the petitioner), without obtaining any approval, straightaway effected direct sale keeping top management totally ignorant about the transaction and without approval of the Managing Director, procured 654 M.ts. of steel from the Government and sold it to M/s.Hitesh Steel Industry Pvt. Ltd. It was also alleged against the petitioner that he effected direct purchase from the Government and sold it to M/s.Hitesh Steel Industry Pvt. Ltd. without any intimation to the authority or the approval of the Managing Director. No entry was made in the books of accounts of the Corporation in respect of such transaction. It also appears to us that the Additional General Manager had also made a note approving the aforesaid proposal of the petitioner, but for some or the other reasons, Managing Director, Mr.K.S.Varma did not agree to the same. It seems that for the larger interest of the respondent-Corporation, the appellant-petitioner had gone ahead with his proposal and entered into the transaction. This was not liked by Mr.Varma, Managing Director and, therefore, at first instance, he had placed him under suspension without issuing charge sheet or imputation of charges, though few months back i.e. on 16.6.1990 he himself appreciated the work of the appellant-petitioner.

#. Considering his blotless and brilliant service record of about 23 years of the appellant-petitioner, it is difficult for us to uphold the judgment and order passed by the learned Single Judge dismissing the writ petition and the impugned order of dismissal passed by the respondent-Corporation in absence of any mala fide or mal intention or any financial loss caused to the respondent-Corporation. In fact, as averred in the petition, the stand and the work of the appellant-petitioner was even appreciated by the Finance Minister. It seems that ego of Managing Director was hurt and, therefore, initially he suspended him and, thereafter got him dismissed from service by not accepting his resignation dated 1.8.1992. At the most, it can be said to be a case of insubordination when the Managing Director did not approve his proposal, then the appellant-petitioner ought not to have proceeded with that deal, but for that he could not have been penalized with such a drastic penalty of dismissal from service. While passing impugned order of penalty, the Disciplinary Authority ought to have kept in mind his past brilliant, blotless and meritorious service record of about 23 years, which he rendered and during that period at least on 4 to 5 occasions he was promoted from one post to other. In our considered opinion, the learned Single Judge, without considering this aspect of the matter proceeded to dismiss the petition on the ground that the misconduct committed by the appellant was of a very serious nature. In that view of the matter, we have no option but to quash and set aside the order passed by the learned Single Judge by accepting the main writ petition and to quash and set aside the impugned order of dismissal dated 18.8.1993 (Annexure-B) passed by the respondent-Corporation.

#. But the question is what relief should be granted to the appellant-petitioner? Once, the appellant-petitioner himself submitted the resignation on 1.8.1992 and, thereafter abandoned the services of the respondent-Corporation, then the respondent-Corporation should be directed to accept his resignation and treat him as resigned from service on 1.8.1992, the day on which he submitted his resignation, and to grant all consequential and incidental service benefits till that period i.e. up to 1.8.1992.

##. Accordingly, this appeal is allowed and the order dated 16.4.1996 passed by the learned Single Judge dismissing the Special Civil Application No.5436/95 filed by the appellant-petitioner is quashed and set aside and by accepting the petition i.e. Special Civil Application

No.5436/95 impugned order of dismissal dated 18.8.1993 (Annexure-B) passed by the respondent-Corporation is hereby quashed and set aside and the respondent-Corporation is directed to treat the appellant-petitioner as resigned from service with effect from 1.8.1992 and to give him consequential and incidental service benefits till 1.8.1992, as if the impugned order of dismissal was never passed against him.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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